

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 250 of 1999

in

SPECIAL CIVIL APPLICATION No 9330 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MK PAREKH

Appearance:

MR ANANT S DAVE for Appellant

MR IS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 11/05/99

ORAL JUDGEMENT

Admitted. Mr.Supehia Learned Counsel for the
respondent appears and waives service of notice of
admission. In the facts and circumstances of the case,

the matter is taken up for final hearing today.

2. This appeal is filed against an interim order passed by the Learned Single Judge in SCA No. 9330 of 1998 on February 3, 1999. The respondent was the original petitioner. He filed the above petition for an appropriate writ, direction or order directing the respondent authorities to declare action of his supersession to the post of Dy. Executive Engineer(Civil) as unjustified and to release the promotion to the said post from October 16, 1998 with all consequential benefits.

3. The Learned Single Judge was prima facie satisfied and hence issued rule. The Learned Single Judge was also impressed by the fact that the petitioner had been superseded on October 16, 1998 and a decision to initiate disciplinary action had been taken on October 14, 1998. According to the learned Single Judge, there was failure on the part of the respondent to take appropriate steps for initiating departmental action in time. The Learned Single Judge in these circumstances passed mandatory order and directed the respondents to promote the petitioner as Dy. Executive Engineer (Civil) on ad-hoc basis. The said order is challenged in the present LPA.

4. We have heard Mr.Patel Advocates for the appellant and Mr.Supehia for the respondents. Learned Counsel for the appellant contended that no order directing promotion could have been issued by the Learned Single Judge. Such a mandamus would not lie. He also submitted that when disciplinary proceedings have been initiated against the appellant, the action of not promoting the petitioner cannot be said to be contrary to law. Our attention was invited to clause 7 of the resolution dated September 23, 1991 issued by the General Administration Department. Clause 7 reads thus:-

"A Government servant whose name is included in the select list but who is subsequently placed under suspension or against whom criminal proceedings/departmental proceedings have been initiated should not be promoted on the basis of his inclusion in the select list until he is completely exonerated of the charges against him. If the Government servant is completely exonerated of the charges, he will be promoted on the basis of his position in the select list, to the post which has been filled on a temporary basis pending disposaal of the charges against

him. If the exoneration is not complete, the question of his suitability for promotion will have to be adjudged a fresh as mentioned in para-5 above."

5. Mr. Supehia Learned Counsel for the respondents, on the other hand, supported the order passed by the Learned Single Judge. He submitted that ordinarily no direction is issued to promote an employee but in the peculiar facts and circumstances of the case and in the light of the circumstances that the petitioner was already selected for the promotional post of Dy. Executive Engineer that such a direction was issued by the Learned Single Judge and no exception can be made against such an order. In the alternative he submitted that even if a direction to promote could not have been issued by the Learned Single Judge, this Court may pass an appropriate order directing the authorities to consider the case of the petitioner for promotion in the light of Rules of promotion.

6. Having heard the Learned Counsel for the parties, we are of the view that LPA deserves to be allowed. So far as the "direction to promote" is concerned, in our opinion, no such direction can be issued even at the stage of final disposal of the matter (Vide State of Mysore Vs. Saiyed Mehmood, AIR 1968 SC 1113). Here the Court has issued direction at an interlocutory stage and the matter awaits final hearing. Therefore, the above direction issued by the learned Single Judge is, in our opinion, contrary to law and is liable to be set aside.

7. So far as consideration of the case of the petitioner is concerned, our attention was invited by the Learned Counsel for the respondent - petitioner to a decision of the Honourable Supreme Court in Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2013. In that case an officer was not promoted on the ground that some departmental proceedings were initiated against him. Sealed cover procedure was therefore, followed by the Government. Considering the Government of India (Department of Personnel & Training) Office memorandum dated January 30, 1982, the Apex Court held that "sealed cover procedure" could be resorted to and permissible only when a charge memo in a disciplinary proceeding or chargesheet in a criminal prosecution was issued and not before that stage. Since the case before the Honourable Supreme Court was not covered by the Office Memorandum, a direction was issued to consider the case of the employee without adopting sealed cover procedure.

8. In the instant case, from clause 7 of Govt. Resolution, extracted above, it is clear that a sealed cover formula can be adopted even against those government servants whose names might have been included in the select list but who have been subsequently placed under suspension or against whom departmental proceedings have been initiated. In the instant case, departmental proceedings were initiated on October 14, 1998 whereas promotions were given thereafter on October 16, 1998. Hence, Clause 7 would clearly apply to the facts of the case and the decision in K.V.Jankiraman would not assist the respondent.

9. It was stated by Mr.Supehia that on February 10, 1999, a chargedsheet was issued and by an order dated March 23, 1999, punishment was also imposed on the respondent-petitioner of stoppage for three increments without future effect. The Counsel contended that such a punishment would not come in the way of the respondent in getting promotion. We express no opinion on that point. It is open to the appellant to draw the attention of the learned Single Judge who will pass appropriate order in the main matter. It is also open to the appellant to draw the attention of the authorities. If the authorities are satisfied, they may also take appropriate action. So far as the grievance made by the appellant before us is concerned, it is well founded and in our view, the order of interim relief could not have been passed by the learned Single Judge.

10. In the result, the Letters Patent Appeal deserves to be allowed and is accordingly allowed. The order passed by the Learned Single Judge issuing interim direction to promote the respondent or to consider his case for promotion is hereby quashed and set aside. Rule is already issued in the petition. The Learned Counsel for the original petitioner is at liberty to request the learned Single Judge for early disposal of the petition. As and when such a prayer is made, the Learned Single Judge will consider the same and pass an appropriate order thereon. The Letters Patent Appeal is allowed. No costs.

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